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Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Summary of the consultations held on the draft basic principles on the right to effective remedy for victims of trafficking in persons

Report of the United Nations High Commissioner for Human Rights

Summary

In accordance with Human Right Council resolution 20/1, the Office of the United Nations High Commissioner for Human Rights, in close cooperation with the Special Rapporteur on trafficking in persons, especially women and children, convened a series of regional and global consultations to further discuss and collect inputs on the draft basic principles on the right to an effective remedy for trafficked persons from all relevant stakeholders, including Member States, experts, intergovernmental organizations and civil society.

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I. Introduction

1. In its resolution 20/1, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to organize, in close cooperation with the Special Rapporteur on trafficking in persons, especially women and children, consultations with States, intergovernmental bodies and civil society organizations to further discuss the draft basic principles on the right to an effective remedy for trafficked persons , and to submit a summary thereon to the Council at its twenty-sixth session. Resolution 20/1 came as a positive response to the report presented by the Special Rapporteur to the Human Rights Council at its seventeenth session,[1] in which she examined the conceptual basis of the right to an effective remedy in the context of trafficking in persons, and made recommendations on how States could better fulfil their obligations. The Special Rapporteur submitted the draft basic principles in an annex to the report with the aim of providing Member States with useful guidance in operationalizing the right to an effective remedy for victims of trafficking in persons.

2. OHCHR and the Special Rapporteur convened the following regional consultations: for Western Europe and Others and Eastern Europe, in Geneva in March 2013); for Latin America and the Caribbean, in Santiago, in July 2013; for Asia, in Bangkok ,in September 2013; for Africa, in Abuja, in November 2013; and for the Middle East and North Africa, in Amman, in January 2014. They also organized two global consultations – in New York and in Vienna, in October and November 2013 – to engage with Member States, intergovernmental organizations, experts and non-governmental actors and to solicit suggestions and input for the draft basic principles (see annex).[2]

3. The basic principles represent the culmination of the focus and work of the Special Rapporteur on the right to an effective remedy for victims of trafficking. She has consistently highlighted the fact that effective remedies are often not accessible to victims of trafficking owing to a gap between the enactment and implementation of national laws and international standards. The lack of adequate and comprehensive remedies for victims of trafficking persists despite their crucial role in ensuring the restoration of victims' human rights.

4. At the consultations, the Special Rapporteur stressed that, in order to realize fully victims' rights to effective remedies, States had to meet both substantive and procedural obligations. International human rights standards clearly provide that States have an obligation to provide for remedies to victims of gross violations of international human rights law and serious violations of international humanitarian law, including by ensuring equal and effective access to justice and prompt and adequate reparation for any harm suffered. Remedies include restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.[3] The procedural obligations may be conceived as the range of measures needed to guarantee access to an effective remedy. Consequently, discussions were structured around this dual track of obligations.

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[1] A/HRC/17/35.

[2] Preliminary summary reports of the consultations are available from www.ohchr.org/EN/Issues/Trafficking/Pages/consultations.aspx.

[3] See the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

II. International legal framework of the right to an effective remedy

5. The right to an effective remedy for victims of human rights violations is recognized under several major international human rights instruments. In the case of victims of trafficking, the obligation to provide remedies stems from the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol). Articles 2, 6, 7 and 9 of the Protocol highlight the role of the State in ensuring that victims are treated with full respect for their human rights and offered a comprehensive range of remedies. The Convention on the Elimination of All Forms of Discrimination against Women recognizes trafficking as a human rights violation and therefore sets State obligations in this regard (art. 6). The Recommended Principles and Guidelines on Human Rights and Human Trafficking[4] refer to access to remedies, while the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law elaborate on the various forms of reparations, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

6. Alongside provisions that directly address trafficking in persons, other instruments address the rights of victims of human right violations, such as article 2 of the International Covenant on Civil and Political Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and various conventions of the International Labour Organization (ILO), in particular ILO conventions 181 and 189.

7. According to the presentations made on the international legal framework at the various consultations, under international law, the duty of the States to provide remedies is invoked in three particular circumstances:

(a) In the case of violations that are the result of an act of or omission by a State actor;

(b) In the case of violations that are committed by non-State actors but with the acquiescence, collaboration, knowledge or acknowledgment of the State;

(c) In the event of failure by the State to exercise due diligence to prevent, investigate or prosecute a violation by private actors.[5]

In the case of trafficking in persons, the responsibility of the State to provide remedies always arises and should be extended to all individuals, whether citizens or non-citizens, under its jurisdiction.

III. Regional frameworks and initiatives

8. Different regions have developed legal frameworks and policy initiatives that reaffirm the right to remedy codified in international human rights instruments.

9. In its articles 12 to 16, the Council of Europe Convention on Action against Trafficking in Human Beings contains comprehensive provisions with regard to effective remedies for victims. Article 12 enshrines the obligation of Member States to secure

[4] E/2002/68/Add. 1.

[5] See also Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 (A/56/10), para. 77.

shelter, medical and material assistance and counselling, while article 15 requires States to provide victims with free legal aid. The Convention is the only international legally binding instrument that contains an obligation to grant a minimum recovery period of 30 days. Article 15 of the Convention also calls upon States to guarantee compensation for victims in their national laws, while article 29 calls upon them to create anti-trafficking in persons coordinating mechanisms involving all relevant public bodies and civil society actors.

10. In its article 25, the American Convention on Human Rights, to which 23 States of the Americas are parties, provides an important base for the protection of victims of human rights abuse. In 2010, the Organization of American States adopted the Work Plan against Trafficking in Persons in the Western Hemisphere, a non-binding document that sets guidelines to help States to fulfil their obligation to provide victims with restitution, recovery (rehabilitation), compensation, satisfaction and guarantees of non-repetition.

11. In the Asia region, several important initiatives ensure the right to an effective remedy. The human rights mechanisms of the Association of Southeast Asian Nations (ASEAN) include the anti-trafficking initiatives conducted by means of the Commission on the Promotion and Protection of the Rights of Women and Children and the Criminal Justice Responses to Trafficking in Persons: ASEAN Practitioner Guidelines (2007). ASEAN has also developed a set of guidelines for the protection of the rights of trafficked children. Moreover, the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime has promoted efforts to combat trafficking, including through workshops, seminars and meetings for technical experts, government officials and civil society organizations on the ratification and implementation of the United Nations Convention against Transnational Organized Crime.

12. In the Africa region, the human rights instruments of the African Union, such as the African Charter on Human and Peoples' Rights, the Protocol to the African Charter on the Rights of Women in Africa and the African Charter on the Rights and Welfare of the Child, guarantee individuals and peoples' rights and impose correlating duties, including specific forms of protection for women and children from forced labour, sexual exploitation and abuse, sale, trafficking and abduction, as well as remedies for redress in the event of human rights violations. In 2006, the African Union adopted the Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children, which is part of the African Union Commission's Initiative against Trafficking Campaign aimed at enhancing the joint efforts of the African Union and the European Union to fight trafficking. At the subregional level, the Economic Community of West African States has also made efforts to address trafficking, including through the establishment of an anti-trafficking unit, and the development in 2009 of the Policy on Protection and Assistance to Victims of Human Trafficking in West Africa.

13. In the Middle East and North Africa region, the League of Arab States has addressed the issue of human trafficking in three conventions: in (a) a treaty on combating transnational organized crime (2012); (b) a convention on combating cybercrimes (2010); and (c) the Arab Charter on Human Rights (2004). Although the Arab Charter on Human Rights does not refer explicitly to the protection of and assistance to victims of trafficking, it does provide for the right to seek legal remedy (art. 12) and the right to compensation (arts. 8 (2), 14 (7) and 19 (2)), and requires States parties to ensure effective remedies for any person whose rights or freedoms have been violated.

IV. Common trends and issues

14. In all consultations, there was general agreement that effective remedies remained largely inaccessible, despite the existence of international and regional frameworks. The

main obstacles identified included poor implementation and interpretation of existing national legal frameworks, limited resources, capacities and infrastructure dedicated to the issue, and also gaps in identification and the tendency to criminalize victims, coupled with restrictive immigration policies.

15. During discussions on the substantive components of the right to an effective remedy, Member States and stakeholders highlighted the importance of a victim-centred and human rights-based approach, as well as the need to develop holistic, comprehensive and integrated services for victims of trafficking. Discussions on compensation triggered questions on and requests for a better conceptual definition of compensation and identification of channels through which victims can obtain compensation, delineating the responsibilities of both State and non-State actors while taking the specificities of judicial systems (common law as against the civil law system) into consideration.

16. With regard to the procedural components of the right to a remedy, participants highlighted the fact that citizenship and residency status should not be determining factors in the provision of assistance, and that States must move from a national security approach to a human rights- and victim-centred perspective to combat trafficking. Greater security and protection must be systematically offered to victims of trafficking so that they may have access to redress and recovery, through non-criminalization, the granting of unconditional assistance, the provision of temporary residence status and subsistence support. Some also stressed that the realization of procedural preconditions depended heavily on the capacity-building and training of all relevant stakeholders, including law enforcements agents and legal practitioners, as well as social services providers and civil society partners.

17. Another common theme that emerged during the consultations was the importance of cooperation and partnership at both the national and international levels with regard to mutual legal assistance and victim care. It was stressed that, at the national level, cooperation between Governments and non-governmental organizations was vital in the identification of victims and the implementation of recovery, rehabilitation and reintegration measures. At the same time, cross-border cooperation between States was also identified as necessary to ensure redress through mutual legal assistance in investigations and prosecutions, safe repatriation, guarantees of non-repetition and compensation of victims by means of joint efforts in tackling the root causes of vulnerability in countries of origin.

18. Member States referred to the ongoing challenges in prosecuting trafficking offences and the high degree of impunity for such violations, and requested guidance in reconciling the right to an effective remedy, including unconditional support for victims, with the effective prosecution of traffickers, which is possible only with the cooperation of victims.

V. Substantive components of the right to an effective remedy

A. Restitution and recovery (rehabilitation)

19. The aim of restitution was outlined at different consultations; it was suggested that the concept of the "best interest of the trafficked person" should be clearly defined to avoid different interpretations.

20. The non-obligatory nature of recovery in the Palermo Protocol was identified as an obstacle to the effective realization of the right to restitution and recovery, since it generally uses exhortative rather than prescriptive language with regard to provisions on victims' rights.

21. A recurring recommendation in all consultations was the provision of a non-conditional reflection period during which victims of trafficking would be assisted in their physical, psychological and social recovery through the provision of essential services, such as adequate shelter; counselling and information about their situation and legal rights in a language that they understand; medical, psychological and material assistance; and employment, educational and training opportunities. The reflection period was described as being essential for victims to overcome psychological and physical trauma and to gain enough confidence to engage in legal proceedings, if they so wished. In order to achieve restitution and rehabilitation, suggestions were made to establish and strengthen multidisciplinary anti-trafficking coordinating committees, one-stop centres offering a comprehensive range of services, funds for victim compensation, exemption from court fees, and legal counselling.

22. Safe repatriation was also identified as a form of restitution that is preferred by a large number of identified victims. It should be provided by countries of destination and origin alike, unless not in the best interests of the victim, when it could lead to reprisals or further human rights violations. In this regard, it was underlined that States should increase their efforts to provide victims with appropriate residence status as a form of remedy. One major obstacle to this aspect of restitution was identified as differing domestic requirements for granting such residency permits. Suggestions were however made to inscribe these measures within the obligation of the State to provide humanitarian protection for individuals in a position of vulnerability, as requested in article 7 of the Palermo Protocol.

23. Participants also pointed out that another major obstacle to achieving effective restitution was the practice in many States whereby assistance, including the granting of residency permits, is dependant on the cooperation of the victim in legal proceedings; to be effective, however, assistance should be unconditional and accessible to all victims.

24. The need to take into due consideration the diverse backgrounds, experiences, traditions and cultures of victims was also flagged as being vital when restoring what has been lost by victims, ensuring that they are not subjected to discriminatory treatment in law or in practice, and also ensuring that the individual circumstances of victims are taken duly into account.

25. Addressing the root causes of trafficking in the long term was underlined as an important aspect of restitution to ensure that victims of trafficking in persons were not returned to their pre-existing positions or put at risk of being re-trafficked. This included eradicating poverty, combating discrimination and gender-based discrimination and violence, and enhancing the rule of law.

26. It was noted that reintegration could comprise vocational placement, support for parents for child care, and micro grants to victims. These reintegration efforts could help to empower victims, address stigma, reduce vulnerability and allow victims to readjust to their communities of origin. It was suggested that, for effective reintegration in the country of origin, it is necessary to inform victims about work opportunities in their home countries in order to reduce the incidence of re-trafficking. Another recommendation was that long-term support programmes be secured so that victims may still have access to socio-psychological support well after completing reintegration. Rehabilitation programmes should also contain, when appropriate, elements of family mediation in the event that the victim is returning to the community of origin.

27. Non-governmental organizations were also recognized as key partners in realizing rehabilitation through reintegration, given that they can readily gather information on the victim's family and social context and actively follow up on the victim's situation over time. Rehabilitation was also recognized as a key factor in empowering victims so that they

are able to reintegrate into communities and act as advocates to prevent future trafficking of others from their communities.

B. Compensation

28. Compensation was widely recognized as an important element of the right to effective remedies for victims of trafficking but lacking. Numerous elements of compensation were identified, including wages from uncompensated or undercompensated labour, the cost of physical and psychological medical treatment, and recognizing the moral and emotional harm inflicted, together with collateral harm committed by the State, such as re-victimization.

29. Participants in the consultations underlined the fact that access to compensation remains limited owing to, inter alia, not only the lengthy judicial processes involving both criminal and civil proceedings but also the exclusion of victims with an irregular immigration status and victims of sex exploitation from having access to civil recourse to seek compensation for unpaid wages. Some also pointed out that victims of commercial sexual exploitation had great difficulty in obtaining financial compensation owing to stigmatization,. Economic inequalities and gender-based discrimination were identified as factors disproportionately affecting the ability of women victims to recover lost wages.

30. The widespread obstacle of insufficient funds allocated to supporting victims of trafficking was also underlined. Participants stressed that, in addition to the establishment of victims' funds, a State-funded compensation scheme could be an important restitution mechanism and an effective means for the provision of compensation. Concerns were nonetheless expressed with regard to generating and managing fund resources. Participants stressed the need to unify the scheme for the confiscation of proceeds from crimes, stating that proceeds should go directly towards support for victims, while a specific proportion of proceeds should be allocated to compensation. While appreciating that each State may have its own strategy for implementation, participants noted that a consensus on generally accepted standards for compensation and assistance for victims was needed. In this regard, it was also suggested that resources for victims' funds should not solely result from the seizure and forfeiture of traffickers' assets, but rather that States should develop alternative means to raise funds for victim support and compensation.

31. It was suggested that compensation should be considered an important means of combating trafficking that serves restorative, punitive and preventive purposes, insofar as it provides victims with the financial autonomy necessary to escape from situations of vulnerability and from the risk of being re-victimized.

VI. Procedural preconditions in realizing the right to effective remedies

32. Participants in the consultations generally agreed that victims of trafficking had not had access to the substantive components of the right to an effective remedy, mainly because they are hardly ever identified. Victim identification is the first precondition for realizing the right to remedy. Besides the matter of identification, the issue of criminalization relating to the victim's immigration status was also widely recognized as a major obstacle in the access to effective remedies. Moreover, capacity gaps were described as an important factor that affectsed both the identification and the provision of adequate support services.

33. The Special Rapporteur emphasized the need for victims to receive information on their right to obtain remedies, and pointed out that the availability of adequate information remained a challenge, given that free legal aid was often not available in many countries, while language often constituted a barrier in victims' access to information. In the regional discussions, participants also emphasized that resources and capacities were still broadly insufficient to cater for victims of trafficking adequately. The limited knowledge of prosecutors and judges about trafficking issues was identified as a major obstacle. Capacity gaps were also identified as an impediment to the proper prosecution of trafficking offences and the awarding of compensation to victims. In this regard, the need for increased capacity-building efforts and technical cooperation was stressed in all discussions.

34. According to participants, restrictive immigration policies were a major impediment in the access to remedies, because many States imposed eligibility criteria for assistance that often extended to citizenship or immigration status; victims of trafficking were therefore frequently indirectly denied justice, because they were misidentified and criminalized as irregular migrants. As a result, they were not given adequate assistance and protection, but rather faced arrest, detention, deportation or charges for immigration-related offences, solicitation of prostitution, engagement in irregular work or forgery of identity documents, thus leaving them without any opportunity to seek redress or compensation. Such restrictive policies also favour the insidious nature of trafficking, as victims are too fearful to report to the authorities. Participants stressed that, although the principle of non-criminalization was not reflected in the Palermo Protocol, it was an important issue that had to be taken into full consideration when implementing anti-trafficking policies. Other factors that discouraged victims from approaching the authorities included the fear of retribution, social stigma and the possibility of re-traumatization during legal proceedings.

35. The Special Rapporteur recommended that victims be provided with residency status in the country of destination for the duration of their period of reflection, criminal, civil or administrative proceedings, or even longer if return is not in the best interest of the victim. In this regard, the issue of victims of trafficking from populations in an emergency or crisis, such as refugees and displaced persons, was raised, in particular during one consultation; some participants requested that refugee status or permanent relocation to third countries be granted to victims in need of international humanitarian protection.

VII. Special considerations for trafficked children

36. It was widely recognized that children should be offered special protection and rehabilitation as victims of trafficking, or as minors under the care of parents or guardians who are themselves victims of trafficking. In this context, the vulnerability of children and their legal status should be at the centre of measures developed to cater for this category of victims.

37. Participants recognized that children were especially vulnerable to intimidation by traffickers and to the social stigma that can accompany trafficking in persons. These factors should be taken into consideration in the development and implementation of restitution initiatives. A longer period of reflection for child victims was recommended, as it is important to ensure their informed consent through access to information in a medium accessible and appropriate for them. With regard to compensation, a suggestion was made that any compensation awarded to child victims should remain partially under the control of the State so that it may be used by the victims once they reach the age of majority in order to give them an opportunity to build their future.

38. Specific recommendations were made with regard to the protection of child victims, including extending immigration relief to members of the immediate family of victims, the

provision of support to parents for child care, access to school and the introduction of free and compulsory basic education programmes as part of rehabilitation and reintegration initiatives. Participants also stressed that, in cases of voluntary repatriation, it was vital to ensure safe return by monitoring and evaluating the victim's environment of origin, and also to ensure that the family was not a direct actor in the trafficking of the child.

39. Participants in the consultations further highlighted the fact that greater awareness of existing gender biases was needed in the rescue and rehabilitation of girl child victims. They pointed out that girls trafficked for sex work often did not receive sufficient attention or care from social workers, and that their cases had often been handled as cases of juvenile delinquency rather than of victims of human rights violations. Proposed ways to counter such biases included giving equal weight to the testimonies of women and girls and the sustained fight against biases and inequalities, which foster the vulnerability of female victims.

VIII. Revision process

40. The draft basic principles were revised on the basis of existing international human rights law and standards, as well as oral inputs and some 30 written submissions received during the consultative process from a large range of stakeholders, including Member States, experts, participants, inter-governmental bodies and organizations and civil society. While a more detailed explanatory note on the revision process is forthcoming, some of the key changes are summarized below.

41. The term "trafficked persons" was replaced with "victims of trafficking in persons", for the sake of consistency with the scope of the right to remedy under international law, such as when a right to remedy is due to the family of a deceased victim of trafficking.

42. In response to requests by States for greater clarity on when international law mandates the right to remedy, section I (rights and obligations) clarifies the obligation of the State to provide a right to remedy – including restitution, compensation, rehabilitation and recovery, satisfaction and guarantees of non-repetition – when it commits an internationally wrongful act, meaning either that the harm is attributed to the State or it has failed to exercise due diligence. States have also an international obligation to provide and/or facilitate remedies if mandated by binding international law, such as in the treaties to which it is party. These obligations exist independently of any finding of State responsibility for the original harm and include, for example, the obligation of States parties to provide the possibility of compensation under article 6 (6) of the Palermo Protocol.

43. In response to a number of submissions, the basic principles also emphasize the importance of bilateral and multilateral State cooperation, enabling States thereby to meet their obligations on the right to a remedy, as well as of the principle of non-refoulement and access to asylum procedures as components of the right to an effective remedy.

44. Section II (on access to the right to a remedy) defines other procedural elements of the right to remedy and, in response to the submissions received, further clarifies areas such as the nature of assistance necessary for access to remedies, the scope of the reflection and recovery period, and ensuring equal access to the right to remedy, including through gender-sensitive mechanisms. The principle of non-punishment of victims of trafficking in persons and the rights to safety, privacy and confidentiality were also added as a result of the consultative process.

45. Section III (on forms of the right to remedy) addresses the substantive elements of the right to remedy, and now incorporates international law definitions of each of the forms of the right to remedy, further detail on operationalizing the remedies of restitution,

compensation, rehabilitation and recovery, and new paragraphs on the remedies of satisfaction and guarantees of non-repetition.

46. Section IV (on the right to remedy for child victims of trafficking) clarifies the additional elements necessary to ensure a human rights-based approach for trafficked children, including the scope of the requirement to give due weight to a child's views.

IX. Conclusions

47. **The Office of the High Commissioner thanks the Special Rapporteur on Trafficking in persons for the fruitful collaboration in convening and organizing the regional consultations, in fulfilment of the mandate provided by Human Rights Council resolution 20/1.**

48. **In the light of the interest raised among Member States and the numerous inputs received during the consultation process, OHCHR welcomes the basic principles and encourages the Human Rights Council to consider endorsing them with a view to Member States incorporating the principles into their domestic legal framework so that these can become a living tool for practitioners in their daily anti-trafficking work.**

Annex

Basic principles on the right to an effective remedy for victims of trafficking in persons

I. Rights and obligations

1. Victims of trafficking in persons, as victims of human rights violations, have the right to an effective remedy for any harm committed against them.

2. All States, including countries of origin, transit and destination, shall provide adequate, effective and prompt remedies to victims of trafficking in persons, including non-citizens, within their territory and subject to their jurisdiction, when the State is legally responsible for any harm committed against them; this includes when harm is attributable to the State or when the State has failed to exercise due diligence to prevent trafficking, to investigate and prosecute traffickers, and to assist and protect victims of trafficking in persons. The right to effective remedy includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

3. Regardless of whether a State is responsible for the original harm, the State shall provide and/or facilitate access to remedies as required by binding international law, including anti-trafficking instruments and international human rights law.

4. The right to an effective remedy shall be provided to victims of trafficking in persons without discrimination in law or in practice on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth or other status, including their age, their immigration status, their status as victims of trafficking in persons, their occupation or the types of exploitation to which they have been subjected.

5. The right to an effective remedy encompasses both the substantive right to remedies and the procedural rights necessary to secure access to them. The right to an effective remedy reflects a victim-centred and human rights-based approach that empowers victims of trafficking in persons and respects fully their human rights.

6. Bilateral and multilateral State cooperation is an important means enabling States to meet their obligations with regard to the right to an effective remedy for victims of trafficking in persons.

II. Access to the right to a remedy

7. Whether States are legally responsible for harm or otherwise have an obligation to provide and/or facilitate access to remedies under international law, procedural rights and preconditions for remedies include that victims of trafficking in persons:

(a) Have a legally enforceable right to have access to remedies, including through criminal, civil, labour or administrative proceedings, irrespective of the victim's immigration status, return to his or her country of origin or absence from the jurisdiction. This includes the right of victims of trafficking in persons to have effective access to asylum procedures;

(b) Are promptly and accurately identified, including through adequate procedures and appropriate training for State officials and cooperation between relevant authorities and non-governmental organizations;

(c) Are fully and promptly informed, in a language and form they understand, of their legal rights, including their right to have access to remedies, the remedies available, and procedures for obtaining remedies;

(d) Are provided with a reflection and recovery period, whether as identified or presumed victims, with access to such services as housing and psychological, medical, social, legal, employment, professional and material assistance. Following the said reflection and recovery period, a victim of trafficking in persons should be provided with any residence status necessary, such as to allow the victim of trafficking to exercise his or her right to remain during proceedings or as a form of restitution;

(e) Are provided with assistance necessary to have access to remedies, regardless of their immigration status, including medical, psychological, social, administrative and qualified linguistic and legal assistance, such as free legal aid;

(f) Are not detained, charged or prosecuted for activities that are a direct consequence of their situation as victims of trafficking in persons, including for violations of immigration law;

(g) Have a right to remain lawfully in the country in which the remedy is being sought for the duration of proceedings, without prejudice to any claim they may have to the right to remain on a more permanent basis as a remedy in itself;

(h) Have equal access to the right to remedy, including by ensuring that all investigations, prosecutions and other mechanisms are gender-sensitive; take into full account the different assistance and protection needs of women, men, girls and boys; address sexual and gender-based violence appropriately; ensure that victims are able to come forward to seek and obtain redress; prevent discriminatory evidence and afford equal weight to the testimony of women and girls; and avoid trauma, re-victimization and stigmatization;

(i) Have access to remedies that is not dependent upon their capacity or willingness to cooperate in legal proceedings;

(j) Have their rights, and the rights of their families and witnesses, to safety (including from intimidation and retaliation), privacy and confidentiality protected before, during and after proceedings.

III. Forms of the right to remedy

A. Restitution

8. States shall provide restitution that, whenever possible, restores the victim to the original situation before the trafficking except in circumstances that place the victim at risk of being re-trafficked or of further human rights violations.

9. Restitution includes, as appropriate:

(a) Restoration of liberty, including release of the victim from detention;

(b) Enjoyment of human rights and family life, including reunification and contact with family members;

(c) Safe and voluntary repatriation to one's place of residence, if applicable;

(d) Temporary or permanent residence status, refugee status or third-country resettlement on such grounds as the inability of States to guarantee that return is safe for victims of trafficking in persons and/or their families, respect for the principle of non-refoulement, the risk of re-trafficking and the risk of reprisals;

(e) Recognition of the victim's legal identity and citizenship;

(f) Restoration of the victim's employment;

(g) Assistance and support to facilitate social integration or reintegration of repatriated victims;

(h) Return of property, such as identity and travel documents and other personal belongings.

B. Compensation

10. States shall provide victims of trafficking in persons with compensation for any economically assessable damages as appropriate and proportional to the gravity of the violation and the circumstances of each case. Mere difficulty in quantifying damage shall not be invoked as a reason to deny compensation.

11. Forms of compensation include, as appropriate:

(a) Damages for physical or mental harm;

(b) Damages for lost opportunities, including employment, education and social benefits;

(c) Reimbursement of costs of necessary transportation, temporary child care, temporary housing or the movement of the victim to a place of temporary safe residence;

(d) Payment for material damages and loss of earnings, including loss of earning potential, lost income and due wages according to national law and regulations regarding wages;

(e) Moral or non-material damages resulting from moral, physical or psychological injury, emotional distress, pain or suffering;

(f) Reimbursement of legal fees and other costs or expenses incurred, including those incurred relating to the participation of the victim in criminal investigation and prosecution processes;

(g) Reimbursement of costs incurred for legal or expert assistance; medicine and medical services; physical, social, psychological or psychiatric treatment or services; or any occupational therapy or rehabilitation required by the victim;

(h) Reimbursement for any other costs or losses incurred by the victim as a direct result of being trafficked and as reasonably assessed by the relevant body or bodies.

12. States shall ensure that laws, mechanisms and procedures are in place to enable victims of trafficking in persons to have access to compensation, including:

(a) To sue offenders or others for civil and/or labour damages;

(b) To secure awards or orders from criminal courts for compensation from persons convicted of offences;

(c) To provide access to established national funds or schemes for victims of crimes and/or to establish dedicated funds or schemes for victims of trafficking in persons to claim compensation from the State for damages, including when compensation cannot be obtained from perpetrators;

(d) To freeze and confiscate the instruments and proceeds of trafficking, including for the purposes of supporting and compensating victims of trafficking in persons;

(e) To enforce reparation judgements, including foreign judgements.

C. Rehabilitation and recovery

13. States shall provide victims of trafficking in persons with the means necessary for their rehabilitation and recovery, including medical and psychological care, as well as legal and social services, such as shelter, counselling, health services and linguistic support.

14. States shall ensure that the access of victims of trafficking in persons to rehabilitation and recovery measures is not dependent on their capacity or willingness to cooperate in legal proceedings.

D. Satisfaction

15. States shall provide satisfaction as a non-financial form of reparation designed to compensate moral damage or damage to the dignity or reputation of the victims of trafficking in persons.

16. Satisfaction should include any or all of the following:

(a) Effective measures aimed at the cessation of continuing violations;

(b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety, privacy and other interests of the victim of trafficking in persons, the victim's relatives, witnesses or persons who have intervened to assist the victim or to prevent the occurrence of further violations;

(c) An official declaration or a judicial decision restoring the dignity, reputation and the rights of the victim of trafficking in persons and persons closely connected with the victim, according to the circumstances of the case;

(d) Public apologies, including acknowledgement of the facts and acceptance of responsibility;

(e) Judicial and administrative sanctions against persons liable for the violations.

E. Guarantees of non-repetition

17. States shall provide guarantees of non-repetition of trafficking in persons to combat impunity and prevent future violations. Such measures include, where applicable, any or all of the following:

(a) Ensuring the effective investigation, prosecution and sanctioning of traffickers;

(b) All measures necessary to protect the victim of trafficking in persons from re-trafficking, including through safe return, temporary or permanent residence status where applicable, and integration support;

(c) Providing or strengthening the training of law enforcement, immigration and other relevant officials in the prevention of trafficking in persons;

(d) Strengthening the independence of the judiciary;

(e) Modifying legal, social and cultural practices that cause, sustain or promote tolerance to trafficking in persons, including gender-based discrimination and situations of conflict and post-conflict;

(f) Effectively addressing the root causes of trafficking, such as poverty, gender inequality and discrimination;

(g) Promoting codes of conduct and ethical norms, in particular international standards, for public and private actors, including to promote public-private partnerships against trafficking in persons;

(h) Protecting legal, medical, health-care and other related professionals and human rights defenders who assist victims of trafficking in persons.

IV. Right to remedy for child victims of trafficking

18. In addition to the above, the State shall provide and/or facilitate access to remedies for child victims of trafficking by ensuring that:

(a) The best interests of the child are a primary consideration, taking into account the individual circumstances of the child, including age, gender, degree of maturity, ethnic, cultural and linguistic background, and protection needs. When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and be treated as such until his or her age is verified;

(b) A child who is capable of forming his or her own views enjoys the right to express those views freely in all matters affecting him or her, and the views of the child are given due weight in accordance with the child's age and maturity. To enable participation by the child, States should provide trafficked children with accessible information on all matters affecting their interests, such as their situation, rights, services available and all remedies, including the processes of family reunification and/or repatriation;

(c) Procedures for obtaining access to and enforcing remedies are effective, child-sensitive and readily accessible to children and their representatives, including legal guardians appointed to represent the interests of the child;

(d) Child victims of trafficking are provided with appropriate physical, psychosocial, legal, educational, health-care and safe and suitable housing assistance and protection (including protection during legal proceedings), taking into full account their age and special vulnerabilities, rights and needs;

(e) Adequate and appropriate training on the specific needs, rights and vulnerabilities of child victims, particularly legal and psychological training, is provided for persons working with child victims of trafficking.